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U.S. DISTRICT COURT
JULY 23, 2004

Guy M. Hicks
General Counsel

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VIA HAND DELIVERY

Hon Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Planet Connect Letter Complaint*
Docket No. 04-00131

Dear Chairman Miller.

Attached is a copy of Kentucky House Bill No. 627, which became effective July 13, 2004. BellSouth is filing a copy of this legislation to supplement the arguments made in its June 14, 2004 response to the letter filed by Planet Connect.

In its letter, Planet Connect requested that the Authority change course and reverse itself on the DSL over UNE-P issue recently decided in the DeltaCom Arbitration (Docket No. 03-00119). Planet Connect's letter relied solely on decisions made in Kentucky by the Kentucky Public Service Commission and a U.S. District Court, which upheld that decision with respect to the DSL over UNE-P issue.

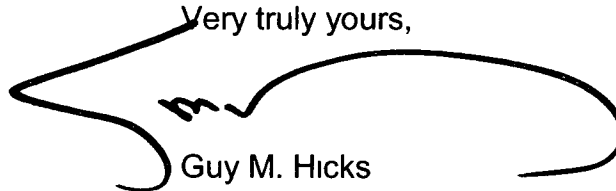
While BellSouth has previously pointed out the obvious – that the Kentucky decisions do not control in Tennessee, BellSouth wishes to notify the Authority that the recently-enacted Kentucky legislation effectively overrules both the Kentucky PSC decision and the U.S. District Court opinion upholding the Kentucky PSC decision. The legislation provides that the provision of broadband services shall be market-based and not subject to state administrative regulation. The legislation further provides that no agency of the state of Kentucky shall impose or implement any requirement upon a broadband service provider with respect to either the availability of facilities or equipment used to provide broadband services, or the rates, terms or conditions for, or entry into, the provision of broadband service. Therefore, the Kentucky decisions upon which Planet Connect relies no longer apply in Kentucky, much less in Tennessee.

Hon. Pat Miller, Chairman
July 23, 2004
Page 2

Based on the above and the legal arguments set forth in BellSouth's response of June 14, Planet Connect's claim should be denied.

A copy of this letter has been provided to Planet Connect.

Very truly yours,

A handwritten signature in black ink, consisting of a large, sweeping loop on the left, a small 'm' in the middle, and a long, horizontal stroke extending to the right.

Guy M. Hicks

GMH:ch



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2004 REGULAR SESSION

HOUSE BILL NO. 627

AS ENACTED

TUESDAY, APRIL 13, 2004

RECEIVED AND FILED
DATE April 22, 2004
11:03 AM

TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adles

AN ACT relating to the provision of broadband service

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
READ AS FOLLOWS:

Whereas, the General Assembly finds and determines that:

(1) State-of-the-art telecommunications is an essential element to the Commonwealth's initiatives to improve the lives of Kentucky citizens, to create investment, jobs, economic growth, and to support the Kentucky Innovation Act of 2000;

(2) Streamlined regulation in competitive markets encourages investment in the Commonwealth's telecommunications infrastructure;

(3) Consumers in the Commonwealth have many choices in telecommunications services because competition between various telecommunications technologies such as traditional telephony, cable television, Internet and other wireless technologies has become commonplace;

(4) Consumers benefit from market-based competition that offers consumers of telecommunications services the most innovative and economical services; and

(5) Consumer protections against fraud and abuse, for the provision of affordable basic service, and for access to emergency services including enhanced 911 must continue.

SECTION 2. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
READ AS FOLLOWS:

In addition to the definitions in KRS 278.010 and KRS 278.516(2), for Sections 1 to 3 of this Act, the following definitions shall apply:

(1) "Broadband" means any service that is used to deliver video or to provide access to the Internet and that consists of the offering of the capability to transmit information at a rate that is generally not less than two hundred (200) kilobits per

1 second in at least one direction; or any service that combines computer
 2 processing, information storage, and protocol conversion to enable users to
 3 access Internet content and services. Nothing in this definition shall be construed
 4 to include any intrastate service, other than digital subscriber line service, tariffed
 5 at the commission as of July 15, 2004.

6 (2) "Local exchange carrier" means any company certified by the commission to
 7 provide local exchange telecommunications service in the Commonwealth on or
 8 before June 30, 1995.

9 SECTION 3 A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO
 10 READ AS FOLLOWS:

11 (1) The provision of broadband services shall be market-based and not subject to
 12 state administrative regulation. Notwithstanding any other provision of law to the
 13 contrary except as provided in subsections (3) and (4) of this section, no agency
 14 of the state shall impose or implement any requirement upon a broadband service
 15 provider with respect to the following:

16 (a) The availability of facilities or equipment used to provide broadband
 17 services; or

18 (b) The rates, terms or conditions for, or entry into, the provision of broadband
 19 service.

20 (2) Any requirement imposed upon broadband service in existence as of July 15,
 21 2004 is hereby voided upon enactment of Sections 1 to 3 of this Act. The
 22 provisions of this section do not limit or modify the duties of a local exchange
 23 carrier or an affiliate of a local exchange carrier to provide unbundled access to
 24 network elements or the commission's authority to arbitrate and enforce
 25 interconnection agreements, including provisions related to remote terminals and
 26 central office facilities, to the extent required under 47 U.S.C. Sections 251 and
 27 252, and any regulations issued by the Federal Communications Commission at

1 rates determined in accordance with the standards established by the Federal
 2 Communications Commission pursuant to 47 C.F.R. Sections 51.503 to 51.513,
 3 inclusive of any successor regulations. Nothing contained in Sections 1 to 3 of
 4 this Act shall be construed to preclude the application of access or other lawful
 5 rates and charges to broadband providers. Nothing contained in Sections 1 to 3 of
 6 this Act shall preclude, with respect to broadband services, access for those
 7 service providers that use or make use of the publicly switched network.

8 (3) The commission shall have jurisdiction to investigate and resolve consumer
 9 service complaints.

10 (4) No telephone utility shall refuse to provide wholesale digital subscriber line
 11 service to competing local exchange carriers on the same terms and conditions,
 12 filed in tariff with the Federal Communications Commission, that it provides to
 13 Internet service providers.

14 Section 4. (1) There is hereby created the Kentucky Broadband Task Force. The
 15 Task Force shall meet during the 2004 and 2005 Interims and examine the deployment of
 16 broadband in the Commonwealth including, but not limited to, the following aspects of
 17 provisioning broadband service: regulation, cost, access to facilities, and market
 18 competition.

19 (2) The Kentucky Broadband Task Force shall be a legislative task force consisting of
 20 nineteen (19) members as follows:

- 21 (a) Three (3) Senate members appointed by the Senate President;
- 22 (b) Three (3) Representatives from the House appointed by the Speaker of the
 23 House;
- 24 (c) Two (2) members representing the Public Service Commission appointed by
 25 the Legislative Research Commission from a list of six (6) persons submitted
 26 by the chairman of the Public Service Commission;
- 27 (d) Eleven (11) members shall be appointed by the Legislative Research

1 Commission as follows:

- 2 1. One (1) member from the Office of the Governor;
- 3 2. Four (4) members representing the incumbent local exchange carriers;
- 4 3. Two (2) members representing the competitive local exchange carriers;
- 5 4. One (1) member representing Internet Service Providers;
- 6 5. One (1) member representing municipal utilities;
- 7 6. One (1) member shall be the Secretary of the Environmental and Public
8 Protection Cabinet; and
- 9 7. One (1) member shall be the Commissioner of Public Protection

10 (3) A majority of the members shall constitute a quorum. The President of the Senate
11 and the Speaker of the House each shall appoint a co-chair from the members
12 named from their chambers to the task force. The task force shall meet quarterly and
13 may meet more often upon a call of the co-chair. Staff services shall be provided by
14 the Legislative Research Commission with assistance from the Public Service
15 Commission.

16 (4) An interim report of findings and recommendations shall be submitted to the
17 Legislative Research Commission and to the Governor no later than November 15,
18 2004, and a final report shall be submitted no later than November 15, 2005.

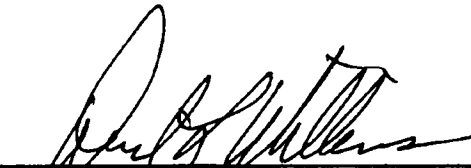
19 (5) The Office of the New Economy shall prepare a baseline assessment of broadband
20 deployment in the Commonwealth. The baseline assessment shall be submitted to
21 the Legislative Research Commission and the Governor by July 1, 2004. Thereafter,
22 the Office of the New Economy shall prepare six (6) month updates on broadband
23 deployment to be submitted to the Legislative Research Commission and the
24 Governor. The assessment and updates shall include, but not be limited to, the
25 number of digital subscriber lines in the Commonwealth and their location and use.
26 Comparable information shall also be obtained for broadband deployment through
27 cable systems. Telephone utilities and cable service providers shall submit

1 information to the Office of the New Economy as needed to prepare the baseline
2 assessment and updates on broadband deployment.

3 (6) Provisions of this section notwithstanding, the Legislative Research Commission
4 shall have the authority to alternatively assign the issues identified herein to an
5 interim joint committee or subcommittee thereof, and to designate a study
6 completion date.



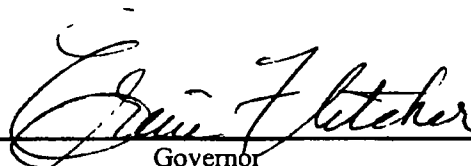
Speaker House of Representatives



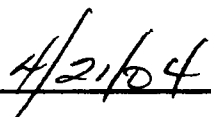
President of the Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2004, a copy of the foregoing document was served on the following, via the method indicated:

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

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